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JUSTIN GRAY

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTIN GRAY, et al

Defendants.

**Case No. 1:20-cr-00238-JLT-SKO**

**JUSTIN GRAY'S MOTION FOR  
RELEASE, INSPECTION, AND  
COPYING OF JURY SELECTION  
RECORDS**

Date: TBD  
Time: TBD

TO THIS HONORABLE COURT AND ASSISTANT UNITED STATES ATTORNEYS  
STEPHANIE STOKMAN, JAMES CONOLLY, AND JARED ENGELKING:

Please Take Notice That at a date, time and place TBD, pursuant to the Juror Management Plan of the United States District Court for the Eastern District of California, sections 6.02 and 6.04, Justin Gray, through his appointed counsel, will move and hereby does move for an order from the Chief Judge of the Eastern District of California to allow release, copying and inspection of jury selection records as set forth below.

This motion is based upon the Fifth and Sixth Amendments to the Constitution, the Jury Selection and Service Act, 298 U.S.C. § 1861 et. seq., the Juror Management

1 Plan for the United States District Court for the Eastern District of California, and the  
2 public right of access to court records. The motion is further based on the accompanying  
3 Memorandum in Support of Justin Gray's Motion for Release, Inspection and Copying of  
4 Jury Selection Records, the pleadings and file in this matter, and such other authorities  
5 and evidence as may be presented in any reply or supplemental briefing or at any hearing  
6 on this motion.

7  
8 Dated: June 11, 2025

Respectfully submitted,

9 */s/ James S. Thomson*

10 */s/ Timothy J. Foley*

11 JAMES S. THOMSON  
12 TIMOTHY J. FOLEY  
Attorneys for JUSTIN GRAY  
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**MEMORANDUM IN SUPPORT OF JUSTIN GRAY’S MOTION FOR RELEASE  
INSPECTION AND COPYING OF JURY SELECTION RECORDS**

**I. INTRODUCTION, BACKGROUND, AND PREVIOUS MOTION**

The Third Superseding Indictment charges Justin Gray with two counts of Murder in Aid of Racketeering under 18 U.S.C. § 1959(a)(1), Count Two and Count Three. Doc # 1098, at 14-15. On October 29, 2024, Mr. Gray’s case was ordered severed from the other co-defendants. Doc. # 1340. Three co-defendants went to trial in January and February. Trial for Mr. Gray has been set to begin on January 27, 2026. Doc. # 1918.

The most recent Jury Management Plan for the Eastern District of California was adopted by the Court on March 26, 2024. General Order No. 678 (2024). Pursuant to sections 6.02 and 6.04 of that plan, applications for disclosure of juror management records “must be made by motion . . . to the Chief Judge, and must show exceptional and compelling circumstances why disclosure should be allowed.” See *United States v. Yandell*, 2023 WL 2918803 (E.D. Cal., April 12, 2023); *United States v. Holmes*, 2020 WL 5408163 (N.D. Cal., Sept. 9, 2020).

The Jury Plan divides the Eastern District into two divisions, the Sacramento Division and the Fresno Division. Jury Plan, Section 1.07. One notable recent change in this Court’s jury management and selection procedures is the shifting of two counties, Calaveras County and Stanislaus County, from the Fresno Division to the Sacramento Division. L.R. 120; General Order 666.

In 2024, Mr. Gray filed a Motion for Release, Inspection, and Copying of Grand Jury Selection Records, Doc. # 1125, requesting records relating to the selection of the grand jurors who returned the indictment. By order filed on September 9, 2024, the Chief Judge granted the motion with some modifications and explanations. Doc. # 1290. That order contained provisions for the protection of the grand jury material produced. Doc. # 1290, at 10–11.

This motion requests jury selection information relevant to the selection of the petit jury for the trial set for January, 2026.

## II. LEGAL STANDARDS

The Sixth Amendment guarantees a criminal defendant an impartial jury selected from a representative cross section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975); *Berghuis v. Smith*, 559 U.S. 314, 319 (2010). The fair cross section requirement does not guarantee that the jury itself be “of any particular composition,” but only “that ‘the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof.’” *United States v. Weaver*, 267 F.3d 231, 236 (3d Cir. 2001) (quoting *Taylor*, 419 U.S. at 538).

The Jury Selection and Service Act (JSSA), 298 U.S.C. § 1861 et. seq., implements this constitutional requirement, declaring that “[i]t is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.” 28 U.S.C. § 1861; see Order, Doc. # 1290, at 2. The JSSA further “prescribes a variety of procedures to guide districts in compiling qualified jury pools.” *United States v. Hernandez-Estrada*, 749 F.3d 1154, 1167 (9th Cir. 2014).

A defendant “may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of [the JSSA] in selecting the grand or petit jury.” 28 U.S.C. § 1867(a). In order to bring such a motion, the defendant is entitled to disclosure of “[t]he contents of records or papers used by the jury commission or clerk in connection with the jury selection process.” 28 U.S.C. § 1867(f). This entitlement is “essentially an unqualified right.” *Test v. United States*, 420 U.S. 28, 30 (1975). As this Court explained in the previous order relating to grand jury selection records:

Defendants need not prove, for example, their planned motion is likely to succeed as a prerequisite to inspecting court records. *United States v. Diaz*, 236 F.R.D. 470, 477 (N.D. Cal. 2006) (citing *United States v. Beaty*, 465 F.2d 1376, 1380 (9th Cir. 1972)). But a defendant’s rights are “not limitless.” *Id.* at 482. Court records may be disclosed only “as may be

necessary in the preparation or presentation of a motion” to dismiss or stay. 28 U.S.C. § 1867(f). In the Eastern District of California, motions to release juror records and requests to inspect jury wheel records must be made to the Chief Judge. See General Order 680, Juror Management Plan §§ 6.02, 6.04. Such motions “must show exceptional and compelling circumstances why disclosure should be allowed.” *Id.*

Doc. # 1290, at 2; see also *United States v. Holmes*, 2020 WL 5408163, at \*2; *United States v. McClellon*, 2023 WL 9002855, at \*1 (W.D. Wash., Dec. 28, 2023).

### III. REQUESTED JURY SELECTION RECORDS.

The most recent refill of the master wheel for the Eastern District was on March 26, 2025. It is anticipated that this will be the master wheel used to select the January jury for Mr. Gray’s trial.

The records requested below include updated documents previously released to counsel in Judge Mueller’s September 9, 2024 order. Doc. # 1290.

Mr. Gray requests for jury selection records are as follows:

1. **Administrative Forms.** Any and all AO-12 forms created that relate to the 2025 Master Jury Wheel and Qualified Jury Wheel used to summon trial jurors. See 28 U.S.C. § 1863(a).
2. **Data.** Any additional statistical or demographic analyses produced to ensure that the Master Jury Wheel and Qualified Jury Wheel used to summon the trial jurors in 2025 complied with the Jury Plan, the JSSA, and constitutional requirements. Jury Plan, Section 1.04. See Doc. # 1290, at 5.
3. **Purge Procedures.** Any existing materials containing descriptions of the procedures used to purge duplicate records and any report or analysis of the procedures in addition to those provided in Jury Plan Section 2.02. See Doc. 1290, at 5.
4. **Calculation Procedures.** Any existing additional records pertaining to the specific procedures followed, as set forth in Section 2.02 and 2.03 of the Jury Plan, and the record of calculations performed as described in Section 4.06 of the Jury Plan. See Doc. # 1290, at 5.

- 1           5.     **General Notice.** Any general notice or notices, issued in 2025, explaining  
2           the process by which names were randomly and periodically drawn from the  
3           wheel. Jury Plan, Sections 3.01 and 4.01. See Doc. # 1290, at 6.
- 4           6.     **Procedures for Non-Responses.** The existing procedures implemented to  
5           address prospective jurors who do not respond to a juror qualification form  
6           or had their juror qualification form returned by the postal service as  
7           undeliverable. “If the Clerk's Office has a procedure, that procedure could  
8           potentially illustrate whether a particular group tends not to respond or not  
9           to have an accurate address, and that information could be necessary to  
10          support a motion under § 1861(a).” *United States v. Yandell*, 2023 WL  
11          2918803, at \*3; see Doc. # 1290, at 6.
- 12          7.     **Information on Failure to Submit.** The number of persons who failed to  
13          return a juror qualification form either electronically or on paper as  
14          described in Sections 3.02 and 3.03 of the Jury Plan. “Data about trends  
15          like these could help an expert form opinions about systematic  
16          underrepresentation . . . .” *United States v. Yandell*, 2023 WL 2918803, at  
17          \*4; see Doc. # 1290, at 6.
- 18          8.     **Failure-to-Appear or Submit.** The juror numbers (not name or address) of  
19          persons summoned for either failure to submit a juror qualification  
20          questionnaire or for failure to appear, as described in Section 3.03 of the  
21          Jury Plan. *United States v. Yandell*, 2023 WL 2918803, at \*4; see Doc. #  
22          1290, at 7.
- 23          9.     **Proportionality Calculations.** The calculation of the number of potential  
24          jurors from each jury division to ensure compliance with the numbers listed  
25          in Sections 2.02 and 2.03 of the Jury Plan. See Doc. # 1290, at 7.
- 26          10.    **Master Jury Wheel Data.** The entire Master Jury Wheel source data in  
27          electronic, accessible (excel spreadsheet) form for the Master Jury Wheel  
28          used (or to be used) to summon the trial jurors called in 2025, as described

in Sections 2.01 and 2.02 of the Jury Plan.<sup>1</sup> The data should include, as available: Race, Gender, Ethnicity, Age, Year of Birth, Zip Code, County, and Jury Division. The data shall not include any personal information that could be used to identify any individuals, such as name or street address. See Doc. # 1290, at 7.

11. **Status Codes.** Status codes for potential jurors selected from the Master Jury Wheel for qualification who either had their qualification form returned by the postal service, did not respond, were disqualified, or exempted from jury service, or qualified for jury service, as described in the Jury Plan. The data should include the following: juror number, whether the form was returned undeliverable, whether the form was not returned, reason for disqualification, qualification status, race, gender, Hispanic ethnicity, birth year, zip code, city, county, and jury division. The data shall not include any personal information that could be used to identify any individuals, such as name or street address. *United States v. Yandell*, 2023 WL 2918803, at \*4; see Doc. # 1290, at 8.

12. **Sources of Data.** The original sources of data (voter registration and Department of Motor Vehicle lists) in electronic form as described in Section 2.01, limited to the 2025 calendar year. The data should include, as available, race, gender, Hispanic ethnicity, year of birth, zip code, city, county, and jury division but not any personal information or information

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<sup>1</sup> Counsel for Mr. Gray notes that the previous order, Doc. # 1290, at 9, directed the clerk to file the documents under seal on the docket of this action. For the most part, such a procedure works. However, for Item 10, the data is requested in electronic excel spreadsheet form and consequently not conducive to filing on the docket (reducing the spreadsheet to pdf form so that it can be filed on the docket is both time-consuming and unhelpful). Counsel requests that this item be produced to the parties without the necessity of filing.

1 that could be used to identify any individual such as name or address. See  
2 Doc. # 1290, at 6.

3 **IV. PROPOSED BRIEFING SCHEDULE**

4 Counsel for Mr. Gray have conferred with the government and suggest the  
5 following proposed briefing schedule regarding this motion:

6 Response by the government: July 9, 2025

7 Reply: July 16, 2025

8 **V. CONCLUSION**

9 Counsel for Mr. Gray request that the Chief Judge of this court order the clerk's  
10 office to allow access, release, and copying of the listed records.

11  
12 Dated: June 11, 2025

Respectfully submitted,

13 /s/ James S. Thomson

14 /s/ Timothy J. Foley

15 JAMES J. THOMSON  
16 TIMOTHY J. FOLEY  
Attorneys for JUSTIN GRAY